RECORD AND BRIEF

Nos. 17-71, 17-74

FILED
AUG - 9 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

WEYERHAEUSER COMPANY,

Petitioner,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, ET AL.,

Respondents.

MARKLE INTERESTS, LLC, ET AL.,

Petitioners,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, ET AL.,

Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF ST. TAMMANY PARISH AS AMICUS CURIAE SUPPORTING WEYERHAEUSER PETITIONER

BERNARD S. SMITH
Counsel of Record
ST. TAMMANY PARISH GOVERNMENT
21454 Koop Drive, Suite 2 G
Mandeville, LA 70471
(985) 898-3427
Bssmith@stpgov.org

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

Library of Congress
Law Library

TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
A. Zoning In St. Tammany Parish	4
B. Environmental Impact	7
C. Economic Impact	8
CONCLUSION	9

TABLE OF AUTHORITIES

Page

RULES AND REGULATIONS

Ordinance No. 07-1548 5

Ordinance C. S. No. 10-2408.....5

Resolution Council Series No. C-3274 .....2, 9

Section 5.3501A 6

Unified Development Code (UDC) – Volume 1 (Zoning) 5

INTEREST OF AMICUS CURIAE

St. Tammany Parish Government is a political subdivision of the State of Louisiana and the local governmental body that has exclusive zoning jurisdiction over the property that is at issue in this matter. The said property has previously been zoned for development as a Traditional Neighborhood and the designation as a "Critical Habitat" will adversely effect same. This brief has been authored solely by counsel for St. Tammany Parish Government and its undersigned counsel of record. No party contributed funding related to the preparation of this brief.[1]

SUMMARY OF ARGUMENT

St. Tammany Parish has a vested interest in the designation by the U.S. Fish and Wildlife Service of the parcel of land at issue consisting of one thousand five hundred forty-four (1,544) acres as "critical habitat" for the gopher frog. The designation effectively removes the property from commerce and adversely affects the Parish's development by its residents and businesses resulting in a reduced tax base hindering local government from meeting the needs of its growing population, which has been the primary refuge of thousands of people who fled their homes from the onslaught of

[1] In accordance with Rule 37.2, all counsel of record have been notified at least ten days prior to the filing of this brief. In accordance with Rule 37.4, no motion for leave to file an amicus curiae brief is necessary if presented on behalf of a county or similar entity when submitted by its authorized law officer.

Hurricane Katrina. The St. Tammany Parish Council officially opposed the said designation during the proposed rule-making process by the adoption of Resolution Council Series No. C-3274 on November 3, 2011.

The zoning authority for St. Tammany Parish dates back to the 1921 Louisiana Constitution, and said authority has been prudently exercised by its Parish Council in the adoption of a Comprehensive Zoning Plan. The property in question was in fact specifically zoned as a "Traditional Neighborhood Development Zoning District." Said district was created for the development of a sustainable, long-term community that provides economic opportunity along with environmental and social equality for its residents. It encourages a mixed use compact development that facilitates the efficient use of services.

The "critical habitat" designation removes said property from being developed and as such usurps the authority of the Parish as authorized by the State of Louisiana to manage growth by determining its highest and best use within the fastest growing Parish in the State of Louisiana.

Historically land use decisions are legally local matters and communities across our nation are disserved when federal agencies overreach to place land off limits when there is no compelling need to do so. Further, management of the proposed habitat to sustain the frogs would ultimately require that the existing forest be destroyed and the establishment of a longleaf pine forest, which would require in turn that

this new forest be maintained by the periodic burning of the property in order to stimulate the growth of new planted longleaf trees, which is essential to converting the existing ponds back into "ephemeral" ponds for frogs to even have a chance to survive at the said property. This maintenance procedure along the abutting Louisiana Highway 36 corridor, which is a critical east-west transportation route, will create serious public safety concerns both for local and interstate commerce traffic as well as resultant health hazards from the thick smoke clouds for the nearby community of Hickory.

Finally, the economic impact from the non-development will result in loss of revenue in the form of property taxes and sales taxes, which are an integral part of public funding for the operation and maintenance of the Parish's Criminal Justice system, school system, fire protection districts, public recreational facilities, roads, drainage, public health and hospitals.

St. Tammany Parish acknowledges that challenges faced by the U.S. Fish and Wildlife Service to protect endangered species. However, the rights of the residents of St. Tammany Parish and the landowners to determine the orderly growth of the Parish should be weighed heavily against an unwarranted attempt by the federal government to assert its excessive authority over the privately owned land where the frogs have not been seen in over fifty (50) years and the habitat no longer exists. President Thomas Jefferson's early warnings of federal overreach still ring true that

history demonstrates that "most bad government results from too much government."

ARGUMENT

A. Zoning In St. Tammany Parish

The zoning authority for St. Tammany Parish dates back to the 1921 Louisiana State Constitution. Over the years and through several forms of government, St. Tammany Parish has exercised said authority by adopting many zoning ordinances, starting first with the establishment of a subdivision regulatory committee to control the growth of the Parish. The Parish exploded from a sleepy rural agricultural community sprinkled with summer houses and small cities/towns to one of fast unprecedented growth when the twenty-four (24) mile long Lake Pontchartrain Causeway was constructed in 1956 interconnecting the City of New Orleans with the Parishes of Jefferson and St. Tammany.

Unfortunately, a very serious contributing factor to the sudden explosion was the devastation which fell upon the entire area, particularly the flooding of the City of New Orleans, by Hurricane Katrina in 2005. The Parish's population has grown by over thirty thousand (30,000) residents since Katrina. Housing became a critical issue, and St. Tammany Parish became essential in the entire surrounding areas' recoveries and in the future growth of the areas' economies.

The designation of the subject property in question for the hopeful preservation of the gopher frog at such a critical time in the history of not only the residents of St. Tammany but also the City of New Orleans and the entire southeast area of Louisiana will certainly have long lasting detrimental effects.

St. Tammany Parish is a home rule charter form of government adopted in 1998. Due to the change after Katrina, the Parish in 2007 passed Ordinance No. 07-1548, adopting a Unified Development Code (UDC) – Volume 1 (Zoning), which established a more stringent comprehensive rezoning process. Numerous public meetings/hearings were held throughout the Parish and before the St. Tammany Parish Zoning Commission and Parish Council, affording the public as well as property owners an opportunity to be heard on the zoning designation of all property in unincorporated St. Tammany. Finally, after a three (3) year process, Ordinance C. S. No. 10-2408 was adopted on December 2, 2010, which completed the comprehensive rezoning of the unincorporated areas of the Parish. The property that is the subject of the "critical habitat" designation by the U.S. Fish and Wildlife Service and which forms the basis of this litigation was included in said process and was zoned to be developed as a Traditional Neighborhood Development. President Grover Cleveland noted: "A government for the people must depend for its success on the intelligence, the morality, the justice, and the interest of the people themselves."

A "Traditional Neighborhood Development Zoning District" (TND-2) was established by said ordinance

for the property in question. The purpose of which is clearly stated in the ordinance:

> Section 5.3501A PURPOSE
>
> The purpose of a TND-2 Traditional Neighborhood Development Zoning District ("TND District") is to encourage mixed-Use, compact Development and facilitate the efficient use of services. A TND District diversifies and integrates land Uses within close proximity to each other, and it provides for the daily recreational and shopping needs of the residents. A TND District is a sustainable, long-term community that provides economic opportunity and environmental and social equity for the residents. This ordinance's intent is to encourage its use by providing incentives, rather than prohibiting conventional Development.

The location of the property was a major factor in the zoning process for its being located north of U.S. Interstate 12 (I-12). Said location of a traditional neighborhood removed its future residents and businesses out of harm's way in the inevitable event of the devastating effects from hurricanes including flooding.

Zoning's primary purpose by local elected officials is for the health, safety, and welfare of its constituents and said authority should not be usurped unreasonably and needlessly by a federal agency.

B. Environmental Impact

When one looks at what said "critical habitat" designation requires relative to the environmental effects to the residents of the area, it is very concerning. An examination of the requirements of what is needed to re-establish a viable habitat for the gopher frog is necessary.

First, the existing loblolly pine forest needs to be destroyed and the property replanted with a type of tree that is very slow growing, the longleaf pine. Second, the growth of the longleaf pine trees can only be stimulated by periodically burning the underbrush and scorching the bark of the trees and the earth to destroy any other vegetation. Third, the fires necessary for maintenance of a longleaf pine forest have created in the past, and will create in the future, hazards to the local traffic and interstate commerce along both Louisiana Highway 36 and U.S. Interstate 12 (I-12). The most concerning is the potential adverse health effects of the burning of one thousand five hundred forty-four (1,544) acres on the local residents of the community of Hickory.

Finally, the potential for disaster exists if the required fires turn into wildfires and spread to said community which is serviced by a rural fire district with limited equipment and manpower.

One of the primary reasons longleaf pine forests, except in designated conservation areas in St. Tammany Parish, are almost nonexistent is because of the adverse environmental effects on its citizens from the

fire. Further complicating the situation are the federal ozone pollution standards which must be met, thereby requiring the preparation of an Environmental Impact Statement in this matter.

Despite the important and critical issues involved in the case *sub judice*, no environmental impact statement was performed in the decision-making process, which should be required in order to protect the environment and the citizens of St. Tammany.

C. Economic Impact

St. Tammany Parish has a mixed tax base utilizing property taxes, impact fees, sales and use taxes, and parcel fees. The current tax structure supports the Parish's Criminal Justice System, school system, fire protection districts, public recreational facilities, roads, drainage, public health, and hospitals. As growth and new development occurs, the economy of the Parish grows with its existing tax structure.

Prior to Hurricane Katrina, the Parish was controlling and meeting the needs of its existing residents by providing the appropriate road infrastructure and essential services. Post Katrina, the aging infrastructure of the Parish has suffered and essential services can only be maintained by the continuation of the growth and economy.

Part of this responsibility is carried by developments under the Traditional Neighborhood concept such as the zoning designation of the property in

question. Developers will be required to provide the essential services concomitant with the expanding Parish infrastructure while at the same time providing a tax base for the generation of taxes to support the management of those services. The non-development of the site in question does not present itself as a viable option to the Parish and was one of the factors in its adopting Resolution Council Series No. C-3274 in opposition to the "critical habitat" designation by the U.S. Fish and Wildlife Service. The Parish's use of the term "Mississippi" in describing the frog was deliberate because the frog has not had a habitat and has not dwelled in Louisiana for over half a century.

CONCLUSION

When reasonable people balance the rights of citizens to develop the areas they reside in utilizing an orderly legal process to preserve and enhance their health, safety, and welfare against the intrusion of a federal agency's grasp at the minimalistic traits of a particular piece of property in a vain attempt to save a frog that has not been sited thereon in over half a century, only one conclusion can be reached. That conclusion is the reversal of the prior decision of the

Courts and a return of government to one of "We The People!"

Respectfully submitted,

BERNARD S. SMITH
Counsel of Record
ST. TAMMANY PARISH GOVERNMENT
21454 Koop Drive, Suite 2 G
Mandeville, LA 70471
(985) 898-3427
Bssmith@stpgov.org